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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON, EUGENE DIVISION

ROCKY J. BRADFORD, in his
individual capacity,

Plaintiff,

vs.

NATIONAL RAILROAD
PASSENGER CORPORATION, d/b/a
AMTRAK, a Washington D.C.
corporation; UNION PACIFIC
RAILROAD COMPANY, a Delaware
corporation; UNITED SEATING AND
MOBILITY, L.L.C., a Missouri limited
liability company d/b/a NUMOTION;
PERMOBIL INC., a Tennessee
company; JOHN DOES 1-10, in their
individual and agency capacity and
XYZ ENTITIES 1-5,

Defendant.

No.:

COMPLAINT

Jury Trial Demanded

1 COMES NOW, Plaintiff, by and through his attorneys of record and
2
3 respectfully sets forth the following statement of claims.
4

5 I. JURISDICTION AND VENUE
6

- 7
8 1. Plaintiff, Rocky Bradford, is a resident of Salem, Marion County,
9
10 Oregon.
11
12 2. Defendant, Permobil Inc. is a foreign corporation domiciled in
13
14 Tennessee and doing business in Oregon. (“Permobil”)
15
16 3. Permobil is in the business of designing, manufacturing, marketing,
17
18 selling and leasing electronic wheelchairs, including complex
19
20 wheelchairs intended for use in the public.
21
22 4. Defendant, United Seating and Mobility, LLC, d/b/a Numotion
23
24 (“Numotion”) is a foreign LLC domiciled in Tennessee and doing
25
26 business in Oregon.
27
28 5. Numotion is a national distributor, lessor, and retail sales provider of
29
30 complex rehabilitation technology, including complex power
31
32 wheelchairs systems and mobility devices that require evaluation,
33
34 fitting, configuration, adjustment, training and programming services.
35
36 6. Defendant, National Railroad Passenger Corporation d/b/a Amtrak
37
38
39

1 (“Amtrak”) is a foreign corporation domiciled in Washington D.C. and
2
3 authorized to conduct business in the state of Oregon.
4

5 7. Amtrak is engaged in the business of a common carrier by railroad in
6
7 interstate commerce and conducts regular sustained business in Marion
8
9 County, Oregon.
10

11 8. Defendant, Union Pacific Railroad Company (“Union Pacific”) is a
12
13 foreign corporation domiciled in Delaware and authorized to conduct
14
15 business in the state of Oregon.
16

17 9. Defendant, Union Pacific is engaged in the business of a common
18
19 carrier by railroad in interstate commerce and conducts regular
20
21 sustained business in Marion County, Oregon.
22
23

24 10. Defendant, Union Pacific owns, maintains and controls the operation of
25
26 trains, including Amtrak trains, over crossing number 759652U
27
28 (Crossing 759352U), as identified by the United States Department of
29
30 Transportation, in the city of Salem that serves Silverton Road North
31
32 East. Union Pacific maintains Crossing 759652U.
33
34

35 11. XYZ Entities 1-5 are corporations similarly situated and structured as
36
37 Numotion and Permobil in that they are in the business of designing,
38
39

1 manufacturing, marketing, selling and leasing electronic wheelchairs,
2
3 including complex wheelchairs intended for use in the public, including
4
5 the wheelchair owned by Plaintiff. Further, XYZ Entities 1-5 are
6
7 corporations similarly situated as Union Pacific or Amtrak in that they
8
9 have a duty to Maintain Crossing 759652U and manage train traffic
10
11 through the city of Salem. Upon discovery of these Entities, Plaintiff
12
13 will amend the complaint accordingly.
14
15

16 12. John Does 1-10 represent individuals who work for Defendants,
17
18 including those identified in paragraph 11, and shared those Defendants
19
20 duties as outlined herein in the scope of their employment. Upon
21
22 discovery of these individuals, Plaintiff will amend the complaint
23
24 accordingly.
25
26

27 13. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)
28
29 because Plaintiff is a citizen of a different state than the Defendants, and
30
31 the amount in controversy exceeds \$75,000, exclusive of interest and
32
33 costs.
34

35 14. Venue is proper as the events giving rise to this action took place in the
36
37 city of Salem, Marion County, state of Oregon.
38
39

II. FACTS

15. Plaintiff realleges the facts stated herein.

16. Prior to the accident giving rise to these claims, Plaintiff, Rocky Bradford, was involved in an accident with a horse. He worked as an exercise boy at the time. The accident injured Rocky leaving him paraplegic.

17. Rocky was thus confined to a wheelchair; however, he was still had limited use of his lower extremities.

18. Rocky has lived in Salem, Oregon at all material times. Salem is a town that has high railroad traffic and multiple railroad crossing. Frequent railroad traffic includes both passenger and freight traffic with the majority of the rails designed to handle freight traffic.

19. Due to the multiple rail lines, there are multiple railroad crossings for automobiles and pedestrians. This has resulted in multiple accidents to the point where the Salem area once held the title as the deadliest place in Oregon for railroad incidents. Joce Dewitt, *Train track fatalities down in recent years*, Stateman Journal, Dec. 21, 2013.

20. From 2013 through 2018, the number of railroad crossing accidents

1 nearly doubled within Marion County, the County where Salem is
2
3 located. Ben Botkin, *Oregon railroad crossing crashes nearly double in*
4
5 *5 years, reasons unclear*, Statesman Journal, Aug. 7, 2019.
6

7
8 21. In August, 2019, Claudia Howells, former head of Oregon's
9
10 Transportation Department Rail Division predicted the risk at railroad
11
12 crossings would increase in Salem stating, "[p]articularly in Salem
13
14 proper, as opposed to Marion County as a whole, you've got the UP
15
16 (Union Pacific) main line running in a very congestion area with a lot of
17
18 cars, a lot of pedestrians, so the risk is going to go up." *Id.*
19

20
21 22. According to the Oregon Department of Transportation, 72% of
22
23 accidents between 2008 through 2017 occurred in urban locations with a
24
25 significant number of incidents being concentrated in the Willamette
26
27 Valley, specifically the Salem and Eugene metropolitan areas. These
28
29 are high population areas with a higher-than-average number of public
30
31 at-grade crossings.
32

33
34 23. From 2008 through 2017, Marion County had the greatest number of
35
36 accidents of all Counties in Oregon. The city of Salem had the highest
37
38 number of accidents of all the cities in the County. In fact, Salem had
39

1 the second highest number of accidents of all cities in Oregon behind
2
3 only Portland; the most populated city in Oregon. Oregon Department
4 of Transportation, *Oregon Highway-Railroad Crossing Safety Action*
5 *Plan*, (2019)
6
7
8
9

10 24. In early 2018, Rocky contracted with Numotion to have a motorized
11
12 wheelchair manufactured and customized for his needs. The Numotion
13
14 store Rocky worked with is located at 200 Hawthorne Ave. SE in Salem
15
16 Oregon.
17

18 25. Numotion, a seller, distributor and supplier of motorized wheelchairs,
19
20 holds itself out as an expert in mobility knowledge with extensive
21
22 industry experience in providing wheelchairs to its customers.
23

24 26. Numotion, with over 150 locations nationwide, helps customers find the
25
26 best wheelchair technology options for individual needs. It also helps
27
28 manage the insurance process for its customers and provides education
29
30 and support services after a customer is provided with a wheelchair.
31
32

33 27. Numotion worked with Permobil in acquiring Rocky's wheelchair.
34
35 Permobil is a seller, distributor, supplier and manufacturer of motorized
36
37 wheelchairs. Permobil designed, manufactured, and distributed Rocky's
38
39

1 wheelchair.

2
3 28. Permobil holds itself out as a company that is passionate about
4
5 providing a better life for people with mobility impairments. Permobil
6
7 claims to tailor their products to meet the day-to-day reality of its users.
8
9

10 29. On or about June 25, 2018, Rocky received, through Numotion, a
11
12 Permobil manufactured Model M1 motorized wheelchair, serial number
13
14 2523001202.
15

16 30. The Model M1 wheelchair has two front caster wheels that measure 180
17
18 x 65 mm. This converts to 7 1/16 inches tall and 2 1/2 inches wide.
19

20 31. Rocky used this wheelchair to navigate over pedestrian rail crossings
21
22 which required him to travel over rail flangeways.
23

24 32. A rail flangeway is an opening or a gap, parallel to a rail, made through
25
26 platforms, pavements, or track structures to permit passage of the trains
27
28 wheel flanges.
29

30 33. At pedestrian crossings, flangeways present a risk and hazard to those
31
32 crossing as they can trip or get caught in the flangeway.
33

34 34. As an example, the gaps can cause individuals to trip or can create
35
36 hazards for those using a cane, bicycle or wheelchair because those
37
38
39

1 items, or parts thereof, can fall into the flangeway and become stuck.
2

3 35. Because of this hazard, the Department of Transportation issued
4

5 Accessibility Standards under the Americans with Disabilities Act
6

7 (ADA) which apply to public transportation facilities, including the
8

9 pedestrian railroad crossing that is subject to this claim.
10

11 36. According to these standards, flangeways on pedestrian crossings must
12

13 be no wider 2 1/2 inches for passenger rail and 3 inches for freight rail.
14

15 37. Crossing 759652U served both freight and passenger rail and as such,
16

17 the flangeway was 3 inches wide.
18

19 38. Upon Rocky's receipt of the wheelchair, neither Permobil or Numotion
20

21 warned Rocky that use of his wheelchair over railroad crossing posed a
22

23 danger to him. He was not warned that the dimensions of the front
24

25 castor wheel were such that they could get stuck on the majority of rail
26

27 flangeways in Salem Oregon. He was not warned that, in the event that
28

29 a castor wheel did get stuck, that the wheelchair would not have the
30

31 power or maneuverability to overcome the flangeway.
32

33 39. In fact, nothing in the model M1 motorized wheelchair's Owner's or
34

35 User's Manual provided a warning that the front castor wheels could fall
36
37
38
39

1 and become stuck inside a flangeway at a railroad crossing, let alone
2
3 that the wheelchair did not have the power or maneuverability to
4
5 extricate itself once stuck.
6

7
8 40. This, despite Permobil and Numotion having knowledge that
9
10 wheelchairs could get stuck in flangeways when navigating railroad
11
12 crossings.
13

14 41. This, despite Permobil and Numotion having knowledge of the high rail
15
16 traffic in Salem requiring pedestrians to routinely cross freight rail lines
17
18 that have a 3-inch gap in the flangeway at crossings.
19

20 42. On November 27, 2019, Rocky was traveling west on the sidewalk of
21
22 Silverton Road in Salem Oregon when he encountered Crossing
23
24 759652U.
25
26

27 43. He began to cross at a perpendicular angle after ensuring no trains were
28
29 approaching.
30

31 44. As he was crossing, he noticed large rocks, the size of golf balls spread
32
33 throughout on the crossing. Just before crossing the flangeway, his
34
35 front castor wheel suddenly shifted. When his castor wheel shifted, it
36
37 fell into the flangeway and got stuck.
38
39

1 45. Rocky attempted to operate his chair to get out of the flangeway but the
2
3 wheelchair lacked the power and maneuverability to overcome the
4
5 obstacle.
6

7 46. Suddenly, Rocky heard a train horn and noticed the crossing warning
8
9 lights activate and the crossing rail come down. The approaching train
10
11 was an Amtrak passenger train operated by Engineer, Peter Cozzi, who
12
13 was acting in the scope of his employment as an agent of Amtrak.
14
15

16 47. Rocky attempted to alert the oncoming Amtrak train that he was there
17
18 by pointing the lights on his wheelchair in the direction of the train.
19

20 48. However, the Amtrak train was traveling at a rate of speed higher than
21
22 that which is permitted in in this particular area of Salem.
23

24 49. Additionally, Amtrak personal were not properly maintaining a lookout
25
26 preventing them from timely being alerted that Rocky was stuck in the
27
28 tracks at the crossing, allowing them to stop before the collision.
29
30

31 50. Rocky then threw himself to the ground and laid as flat as possible
32
33 between the flangeway, terrified of the ensuing collision with Amtrak.
34

35 51. Amtrak failed to stop the train prior to the accident and collided with
36
37 Rocky's wheelchair and Rocky.
38
39

1 52. Rocky was dragged under the train suffering catastrophic injuries.
2

3 III. FIRST CLAIM FOR RELIEF: NEGLIGENCE - AMTRAK
4

5 53.Plaintiff realleges paragraphs 1-52 herein.
6

7 54.Plaintiff's injuries were due in whole or in part to the acts and omissions
8
9 of Amtrak whose negligence includes but is not necessarily limited to
10
11 one or more of the following particulars:
12

- 13
14 a. In failing to maintain the crossing so that it would be safe for use
15
16 by the public, including Plaintiff;
17
18 b. In operating the train which struck Plaintiff at an excessive speed.
19
20 c. In failing to keep and maintain a proper lookout;
21
22 d. In failing to slow or stop the train prior to the accident; and
23
24 e. In failing to issue a slow order or otherwise instruct its own crews
25
26 to reduce speeds below the applicable speed limit at the
27
28 appropriate time.
29
30

31 55.These failures amounted to a breach by Amtrak of its duties owed to
32
33 Plaintiff.
34

35 IV. SECOND CLAIM FOR RELIEF: NEGLIGENCE – UNION PACIFIC
36

37 56. Plaintiff realleges paragraphs 1-52 herein.
38
39

1 57. Plaintiff's injuries were due in whole or in part to the acts and omissions
2
3 of Union Pacific whose negligence includes but is not necessarily
4
5 limited to one or more of the following particulars:
6

- 7
8 a. In failing to construct, update, modify, and maintain the crossing
9
10 so that it would be safe for use by the public, including Plaintiff;
11
12 b. In failing to manage Amtrak allowing it to operate its train at an
13
14 unsafe speed over Crossing 759652U;
15
16 c. In failing to keep Crossing 759652U clear of debris by allowing
17
18 rocks to accumulate on the crossing creating a hazard for
19
20 pedestrians; and
21
22 d. In failing to maintain Crossing 759652U to be safe for use by the
23
24 public, including Plaintiff.
25

26
27 58. These failures amounted to a breach by Union Pacific of its duties owed
28
29 to Plaintiff.
30

31 V. THIRD CLAIM FOR RELIEF: PRODUCT LIABILITY - PERMOBIL
32

33 59. Plaintiff realleges paragraphs 1-52 herein.
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35
36
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39

1 60. Plaintiff's injuries were due in whole or in part to the acts and omissions
2
3 of Permobil whose negligence includes but is not necessarily limited to
4
5 one or more of the following particulars:
6

- 7
8 a. In failing to design, inspect, test, and manufacture the Plaintiff's
9
10 wheelchair to be capable of safely navigating over railroad
11
12 crossings, creating an unreasonably dangerous, defective
13
14 condition in the wheelchair when it was produced, distributed,
15
16 and sold. Namely, Permobil failed to account for the fact that the
17
18 wheelchair's castor wheel was able to fall into a flangeway and
19
20 the wheelchair's mobility and power was inadequate to free the
21
22 castor wheel from the flangeway.
23
24 b. In failing to warn Plaintiff of the hazard that the front castor
25
26 wheels are of the size that can fall and become stuck in
27
28 flangeways at railroad crossings.
29
30 c. In failing to instruct Plaintiff how to properly use the product in
31
32 light of the unreasonably dangerous and defective condition.
33
34

35 61. These failures amounted to a breach by Permobil of its duties owed to
36
37 Plaintiff.
38
39

1 VI. FOURTH CLAIM FOR RELIEF: PRODUCT LIABILITY - NUMOTION

2
3 62.Plaintiff realleges paragraphs 1-52 herein.
4

5 63.Plaintiff's injuries were due in whole or in part to the acts and omissions
6
7 of Numotion whose negligence includes but is not necessarily limited to
8
9 one or more of the following particulars:
10

11
12 a. In failing to design, inspect, test, and manufactured, if so
13
14 manufactured by Numotion, the Plaintiff's wheelchair to be
15
16 capable of safely navigating over railroad crossings, creating an
17
18 unreasonably dangerous, defective condition in the wheelchair
19
20 when it was manufactured, sold and/ or leased. Namely,
21
22 Numotion failed to account for the fact that the wheelchair's
23
24 castor wheel was able to fall into a flangeway and the
25
26 wheelchair's mobility and power was inadequate to free the castor
27
28 wheel from the flangeway.
29

30
31 b. In failing to warn Plaintiff of the hazard that the front castor
32
33 wheels are of the size that can fall and become stuck in
34
35 flangeways at railroad crossings, especially given the high rail
36
37 traffic in the city of Salem, the place Numotion conducts
38
39

business.

c. In failing to instruct Plaintiff how to properly use the product in light of the unreasonably dangerous defective condition that the castor wheels are able to fall into a flangeway and the wheelchair's mobility and power is inadequate to free the castor wheel from the flangeway, especially given the high rail traffic in the city of Salem, the place Numotion conducts business.

64. These failures amounted to a breach by Numotion of its duties owed to Plaintiff.

65. As a result of the negligence of the Defendants, each of them, Plaintiff suffered severe injuries including but not limited to, retroperitoneal hematoma, pelvic and spinal fractures, post-traumatic stress disorder, mental anguish, and unsalvageable injuries to his legs resulting in amputation.

66. As a further result of the negligence of the Defendants, each of them, Plaintiff has incurred medical charges and expenses in excess of \$523,637.30 and continued to incur charges and expenses as his treatment is ongoing and is anticipated to last through the duration of his

1 lifetime. Plaintiff will amend this complaint to reflect the actual and
2
3 current charges and expenses as well as the estimated future charges and
4
5 expenses once discovered.
6

7
8 67. As a further result of the negligence of the Defendants, each of them,
9
10 Plaintiff has suffered noneconomic damages in the form of pain and
11
12 suffering in the amount not less than \$10,000,000.00.
13

14 68. Plaintiff gives notice to Defendants, each of them, of his intentions to
15
16 amend the complaint to seek punitive damages.
17

18 VII. PRAYER FOR RELIEF
19

20 **WHEREFORE**, Plaintiff prays for the following relief:
21

- 22
23 1. For judgment in favor of Plaintiff against all defendants, individually
24
25 and joint and severally as the law shall so provide, together with an
26
27 award for economic and noneconomic damages that will fully and
28
29 fairly compensate him for his injury claim as set forth herein.
30
31 2. For an award of reasonable attorneys' fees and costs as permitted by
32
33 law, including under applicable statutes, regulations, court rules, case
34
35 law, and/or recognized grounds in equity.
36
37 3. For such other relief that this court deems just and equitable.
38
39

1 Dated this 12th day of November, 2021.
2
3

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28 ***Pro Hac Vice Motion Pending***
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